

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
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ALBERT F. CATANACH, JR.,

CLERK-SANTA FE

Plaintiff,

CIV 06-1115 LH RHS

v.

Civ. No. _____

CITI CARDS/BANK,

Defendant.

NOTICE OF REMOVAL

Defendant Citi Cards/Bank ("Defendant"), through its attorneys, Holland & Hart LLP, hereby respectfully submits this Notice of Removal for the purpose of removing the above-entitled action from the Magistrate Court, County of Santa Fe, State of New Mexico, to the United States District Court for the District of New Mexico, and as grounds therefore states:

1. Defendant has been named in the civil action commenced by Plaintiff in the Magistrate Court for the County of Santa Fe, State of New Mexico, entitled *Albert F. Catanach, Jr., Plaintiff, v. Citi Cards/Bank, Defendant*, case number M-49-CV-2006-01237-D-3.

2. Defendant first received notice of this action upon receipt of a copy of the Summons and Civil Complaint on October 26, 2006. Copies of the Summons and Civil Complaint are attached to this Notice of Removal as Exhibit A.

3. In compliance with D.N.M.LR-Civ. 81.1(a), copies of other records and proceedings from the state court action are attached to this Notice of Removal as Exhibit B.

4. This action is being removed because Plaintiff alleges he is entitled to damages for Defendant's failure to credit his account in accordance with the Fair Credit Billing Act, 15 U.S.C. §§ 1666a – 1666i. *See* Ex. A, at 2.

5. Each claim Plaintiff asserts in his Complaint arises out of the Fair Credit Billing Act. *See id.* ¶ 6.

6. Because of the express invocation of a federal statutory remedy (recovery under the Fair Credit Billing Act), Plaintiff's Civil Complaint is removable to this Court under 28 U.S.C. § 1441(b) (general federal question jurisdiction provision) as an action arising under federal law within the Court's original jurisdiction under 28 U.S.C. § 1331.

7. The state court in which this action was commenced is within this Court's district and division. Therefore, this action is properly removable to this Court under 28 U.S.C. §§ 1441(a) and 1446.

8. Undersigned counsel consents to this removal on behalf of the sole defendant to this cause of action.

9. Defendant will serve and certify service of copies of this Notice of Removal to Plaintiff, as required by 28 U.S.C. § 1446(d).

10. A copy of this Notice of Removal will be filed with the Office of the Clerk of the Magistrate Court, Santa Fe County, State of New Mexico, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant prays that the above-captioned action now pending against it in the Magistrate Court, County of Santa Fe, State of New Mexico, be removed to this Court.

Respectfully submitted this 15th day of November, 2006.

HOLLAND & HART LLP

By: 

Trent A. Howell
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
505.988.4421

**Attorneys for DEFENDANT
CITI CARDS/BANK**

CERTIFICATE OF SERVICE

I certify that on this 15th day of November, 2006, I served a copy of the foregoing document to the following by U.S. Mail, postage prepaid:

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Fax

Albert F. Catanach, Jr.
103 W. Barcelona
Santa Fe, New Mexico 87505


Trent A. Howell

3632480, 1 DOC

STATE OF NEW MEXICO

IN THE MAGISTRATE COURT

COUNTY OF SANTA FE

ALBERT F. CATANACH JR., Plaintiff(s)

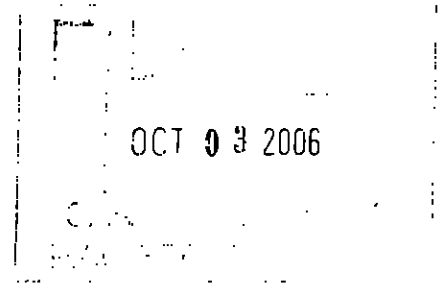
Vs.

No. **M-49-CV-2006-01237-DIV. 03**

CITI CARDS/BANK, Defendant(s)

**CIVIL SUMMONS
THE STATE OF NEW MEXICO**

TO: **CITI CARDS/BANK
LEGAL DEPARTMENT ATTN: S. LARSON**
Address **701 EAST 50TH STREET NORTH
P.O. BOX 6034
SIOUX FALLS, SD 57117**



GREETINGS:

This summons notifies you that a Complaint has been filed against you. A copy of the complaint is attached to this summons. You are required to serve and file an Answer to the Complaint, or a responsive motion, within TWENTY (20) DAYS AFTER THE SUMMONS HAS BEEN SERVED ON YOU. You must file the Answer or responsive motion with the Clerk of the MAGISTRATE Court and you must serve a copy of the Answer or responsive motion on the opposing party.

IF YOU DO NOT FILE AND SERVE AN ANSWER OR RESPONSIVE MOTION WITHIN THE TWENTY (20) DAY PERIOD, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER RELIEF DEMANDED IN THE COMPLAINT.

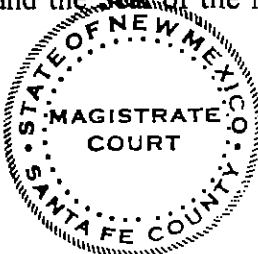
Your answer must be filed with the above named court which is located at:
SANTA FE MAGISTRATE COURT 2056 S. GALISTEO ST. SANTA FE, NM 87505

A copy of your answer must be mailed to the plaintiff or to the plaintiff's attorney.

Name and Address of Plaintiff or Plaintiff's Attorney:

Name: ALBERT F. CATANACH JR.
Address 103 W. BARCELONA
SANTA FE, NM 87505

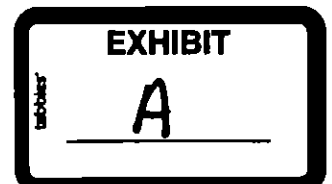
WITNESS the Honorable Magistrate Judge JUDGE RICHARD M. PADILLA Magistrate Judge of said Court of the State of New Mexico and the Seal of the MAGISTRATE Court of said County, this 3RD day of OCTOBER, 2006.



JUDGE RICHARD M. PADILLA

Distribution Instructions

1 copy - Court 1 copy - Service 1 copy - Return of Service
[Supreme Court Approved, August 13, 1992; as amended effective January 1, 1993.]



IN THE MAGISTRATE COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

Case No. M-19-CV-2006-01237-D-3

ALBERT F. CATANACH JR., 120013

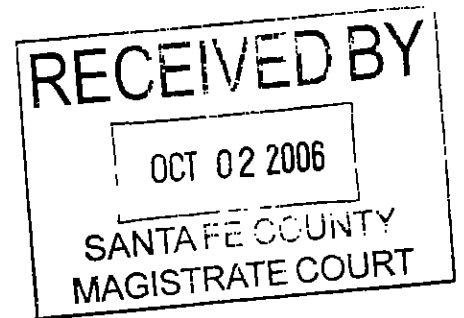
Plaintiff,

v.

CITI CARDS/BANK 152 539

Defendant.

CIVIL COMPLAINT



1. Plaintiff Albert F. Catanach Jr., resides, or may be found in, or the cause of action arose in this county.

2. Plaintiff claims from Defendant the amount of \$9,900 which includes interest and court costs.

3. Plaintiff's claim arises from the following events or transactions

a. Plaintiff purchased material goods via Credit Card issued by Citi Bank also known as Citi Cards. Plaintiff's transactions were as follows:

1. DRMS-Government Liquidation, 1/30/06, \$5074

2. DRMS-Government Liquidation, 2/27/06, \$4053.

4. Plaintiff indicated to Citi Cards that both transactions had either damaged or missing goods and were not delivered as agreed. Plaintiff indicated that they had tried to send the goods back to the merchant but they had refused to accept any goods. Additionally the Plaintiff shipped back many of the products due to defect and the merchant refused the shipment.

5. Phone calls were made to Citi Cards in February and March of 2006 for both transactions indicating the damaged goods and Plaintiff's attempt to send back the goods. Letters were sent in March of 2006 for both transactions.

6 Plaintiff claims the following under the Fair Credit Billing Act:


a. Defendant failed to credit Plaintiff's account due to "charges for goods and or services Plaintiff didn't accept or weren't delivered as agreed." DRMS Government Liquidation had either parts missing from the goods, most were damaged, and many of the goods were not delivered as agreed. Additionally, Plaintiff sent back the damaged goods to DRMS Government Liquidation and sent tracking receipts to Citi Cards.

b. Citi Cards did not resolve the disputes within two billing cycles as the law requires. Dispute Letters were sent to Citi Cards in March of 2006 and Citi Cards did not resolve the dispute until August and September of 2006. This is well over the 90 day requirement of the Fair Credit Billing Act.

c. Under the Fair Credit Billing Act any creditor who fails to follow the settlement procedure, as the Defendant has, may not collect the amount in dispute, or any related finance charges, up to \$50, even if the bill turns out to be correct. Additionally, Citi Cards refused to post credits to the account for returned goods as shown via returned tracking receipts.

Wherefore Plaintiff Prays that the amount charged for both transactions to DRMS Government Liquidation to include court costs and finance charges be awarded to Plaintiff in the amount of \$9,900.

Respectfully Submitted,


ALBERT F. CATANACH JR.
103 W BARCELONA
SANTA FE, NM 87505
505-428-7502
PRO SE

RETURN

STATE OF NEW MEXICO)
) SS
COUNTY OF SANTA FE)

(check one box and fill in appropriate blanks)

☐ I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the within Summons (in said county) (in Minnehaha County) on the 26th day of October, 2006, by delivering a copy thereof, with copy of Complaint attached, and a form for Answer, in the following manner:

(check only if service by sheriff or deputy)

☐ I certify that I served the within Summons (in said county) (in _____ County) on the _____ day of _____, 20____, by delivering a copy thereof, with copy of Complaint attached, and a form for Answer, in the following manner:

(check one box and fill in appropriate blanks)

☐ to defendant _____ (used when defendant receives copy of Summons or refuses to receive Summons).

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, who at the time of such service was absent therefrom. Abode located at _____.

☐ by posting a copy of the Summons and Complaint in the most public part of the premises of defendant _____ (used if no person found at dwelling house or usual place of abode). Abode located at _____.

☒ to CARLE HAUCK, Admin. Asst., an agent authorized to receive service of process for defendant CITI CARDS/BANK.

☐ to _____, (parent) (guardian) of defendant _____ (used when defendant is a minor or an incompetent person).

☐ to _____ (name of person), _____, (title of person authorized to receive service) (used when defendant is corporation or association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \$ 75.00

*Subscribed and sworn to before me this 30
day of October, 2006.

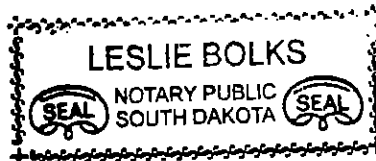
Leslie Bolks

Judge, Notary or Other Officer
Authorized to Administer Oaths

Notary
Official Title

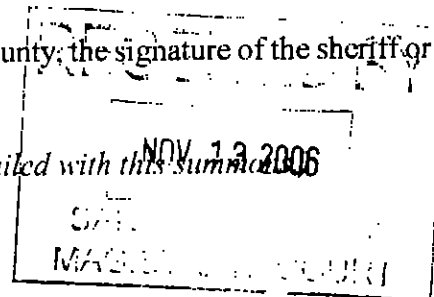
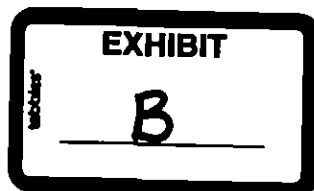
[Signature]
Signature of Person Making Service

Title (if any)



*If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

(If service is by mail, 4-208 must be completed and mailed with this summons)



AFFIDAVIT OF SERVICE

State of New Mexico

County of Santa Fe

Magistrate Court

Case Number: M-48-CV-2006-01237-DIV.03

Plaintiff:

Albert F. Catanach Jr.

vs.

Defendant:

Citi Cards/Bank

For:

Albert Catanach

Received by Front Range Legal Process Service to be served on CITI CARDS/BANK, Legal Department, Attn: S. Larson, 701 East 50th Street North, Sioux Falls, SD 57117. I, Leslie Bolks, being duly sworn, depose and say that on the 27 day of Oct, 2006 at 4:30pm, executed service by delivering a true copy of the Civil Summons; Complaint; in accordance with state statutes in the manner marked below:

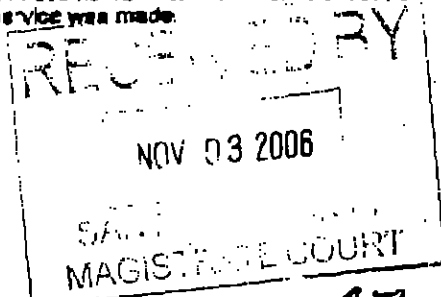
() PUBLIC AGENCY: By serving _____ as _____ of the within-named agency.

(X) CORPORATE SERVICE: By serving Carole Hauke as Administrative Assistant

() OTHER SERVICE: As described in the Comments below by serving _____ as _____

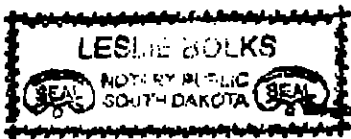
COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



Subscribed and Sworn to before me on the 27 day of Oct, 2006 by the affiant who is personally known to me

Leslie Bolks
NOTARY PUBLIC



Leslie Bolks

PROCESS SERVER # _____
Appointed in accordance with State Statutes

Front Range Legal Process Service
525 Roma Valley Dr.
Fort Collins, CO 80525
(956) 387-3783

Our Job Serial Number: 2006004529

Legal Department
701 East 50th Street North
PO Box 6034
Sioux Falls, SD 57117

ATTN: PERSON

- registered agent

M-49-CV-2006-01237-P-3